92-1731

Supreme Court, U.S.
FILED
APR 28 1993
OFFICE OF THE CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1992

No.

JACK P. JOHNSON, LINDA JOHNSON,

Petitioners,

v.

LOS ANGELES COMMUNITY
COLLEGE DISTRICT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SECOND APPELLATE DISTRICT DIVISION ONE

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QUESTIONS PRESENTED FOR REVIEW

1.) When a federal question was raised and decided concerning an interest in a road across federal land, and the federal question is governing, may the California courts refuse to give effect to federal law and to a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947), which held that "The rule of lost grant to land applies to claims to land held adversely to the sovereign?"

2.) May the California courts give the effect of a statute to a quasi-dedication by the Los Angeles Community College District of land for an ecological reserve by an ad hoc committee of teachers, and take private property for the benefit of the ecological reserve, without compensation and without Due Process, in violation of Amendment XIV and Amendment V of the Constitution of the United States?

3.) May the state courts refuse to apply the rules of interpretation and construction of contracts, deeds and covenants in a uniform and consistent manner, and disregard a valid contract and make a new one for the parties, whereby private property is taken by means of an arbitrary and capricious misapplication of the rules of interpretation to a systematic misstatement of the factual record rationalized by subtle obfuscation of the record, in violation of the Due Process clause of Amendment XIV and of the taking without compensation clause of Amendment V of the Constitution of the United States?

4.) When the Los Angeles Community College District, pursuant to a 1908 road agreement in the chain of title, is a co-owner of a road, approximately half of which crosses the Angeles National Forest

and which the District is required to help maintain by covenants in the 1908 Agreement, does not federal law apply to the interpretation of the contract under the supremacy clause of Article VI of the U.S. Constitution? When the District seeks to repudiate the terms of the Agreement on the grounds that the U.S. Forest Service owns the road, is the District not required to name the U.S. Forest Service as an indispensable party, and where a state court purports to determine the rights of the parties, is not the United States an indispensable party such that the judgment resulting in the absence of the United States as a party is void? Does not federal law apply to the contract under the Supremacy Clause of the U.S. Constitution?

5.) When the state courts acquiesce in the taking of private property by the state without compensation or Due

Process, in violation of Amendment V and Amendment XIV of the Constitution of the United States, is the corrective power of the Supreme Court available to enforce the Constitution?

LIST OF THE PARTIES

(Rule 14.1(b))

The parties to appeal were: the petitioners Jack and Linda Johnson, husband and wife and tenants by the entireties of Gold Creek Ranch, plaintiffs; and, respondent Los Angeles Community College District, a public body, defendant and cross-complainant. (All cross-defendants, except the Johnsons, were dismissed in the trial court and were not parties to the appeal.) (The U.S. Government, which owns and maintains the Angeles National Forest across which the road in question runs for .7 miles, was not made a party, nor was it named as a defendant in either the complaint or cross-complaint.)

Because the petition challenges a state statute on constitutional grounds, and because a jurisdictional claim under the Constitution is made the effect which, if sustained, would impact 28 U.S.C Section

1257, both the attorney general of California and the solicitor general of the United States are both served with the petition pursuant to 28 U.S.C. Section 2403 (a) and (b), Rule 29 (b) and (c).

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PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION ONE

Petitioners, Jack and Linda Johnson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, Second Appellate District, Division One, which opinion was entered on October 23, 1992 and review of which was denied by the California Supreme Court on December 30, 1992.

OPINIONS BELOW

The opinion of the Court of Appeal is set out in the appendix hereto, p. 1, infra.

The oral opinion of the trial court (Hon. Thomas C. Murphy, Judge, Superior Court) is set out in the appendix hereto, p. 42, infra.

Neither opinion is officially reported.

JURISDICTION

Petitioners and respondent cross-complained to quiet title to an access road which crosses federal land and land owned by the Los Angeles Community College District and to determine their respective rights in and to the road under a 1908 deed in their respective chains of title. Each also sought damages from the other, relief denied both. Petitioners' complaint for damages sounded in inverse condemnation. A

permanent injunction against the petitioner (as more fully appears in the appendix, p. 42) was entered upon the trial court's quieting title in the respondent L.A.C.C. district. Other equitable relief was also granted. A finding that petitioners had a personal, noncommercial easement was also made. Petitioners represented themselves and claimed at trial that their property was being taken by the L.A.C.C. district, a political subdivision of the state, and that no competent authority had dedicated the property an ecological reserve.

Upon appeal, counsel objected to the trial court's opinion on the grounds that the court, retroactively, "condemned" petitioners' property without paying just compensation, a claim the Court of Appeal declined to discuss. Petitions for rehearing in the Court of Appeal and for further review by the California Supreme Court were respectively and summarily denied

by order without further opinion, in the Supreme Court by order dated December 30, 1992.

The motion for reconsideration argued that the court arbitrarily reached its decision, and rationalizes its decision, and did not reason from the facts, but rather assumed the facts to justify the decision (page 20 lines 18-28) which "scrapped" the Agreement (page 30 lines 7-11).

Justice O'Connor, by order dated March 15, 1993, extended the time to file the instant petition to and including April 29, 1993.

Jurisdiction of this court is claimed under Statute 28 U.S.C. Section 1257(a).

Inherent jurisdiction of this court is also claimed under the self-executing provisions of Article III, sections 1 and 2, U.S. Constitution.

Because the Court of Appeal's

opinion does not reflect the federal issues decided, the following is offered in aid of jurisdiction.

I.

Raised And Decided

Where a federal question is sufficiently raised, this court has jurisdiction over the entire case including issues not raised in the lower court. (Vance v. Terrazas, 444 U.S. 252, 258-259, n. 5 (1980).) Such rule finds itself codified in Rule 24.1(a), Plain Error, and in 28 U.S.C. Section 2106, granting the Court plenary power over any judgment "lawfully" before it. It appears the court exercises a quasi-pendent, plenary jurisdiction, or, simply, a plenary power (if the rule is merely prudential), where the federal issues are inescapable.

a.

The Superior Court,

Court Of Appeal,

And

California Supreme Court

The case was tried by Mr. Johnson himself, who is not a lawyer, but a professional in the motion picture business. Johnson claimed a co-ownership interest in the road across federal and state land, pursuant to a July 21, 1908 agreement in his and the District's chain of title. The thrust of the Johnson position, stated in the record passim and considered as a whole, was that the school district was taking his road to his 160 acre property by preventing maintenance of the road, and lawful uses he made of the road only after the district had "dedicated" its adjoining 240 acres to an "ecological preserve." Johnson's position was that the dedication took his property contrary to rights granted by deed and

contract in the joint claim of title. This position is implicit throughout the trial, and, in the language of Section 1257, that is what was "set up or claimed."

"[I]f the record as a whole shows either expressly or by clear intendment that [the assertion of the claim] was done, the claim is to be regarded as having been adequately presented." New York, ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928).) "Our jurisdiction does not depend on citation to book and verse." (Eddings v. Oklahoma, 455 U.S. 104, 113-114, n. 9 (1982).)

The Johnsons claimed in their complaint that their property was taken by inverse condemnation by the dedication of the school district's property as an ecological preserve. This is a claim which arises under the self-executing provision of the Just Compensation phrase of the Fifth Amendment made applicable to the states by

the Fourteenth Amendment and necessarily referred to a federal claim. (First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304, 315, 107 S.Ct. 2378, 2883, 2886, citing Armstrong v. United States, 364 U.S. 40, 805 S.Ct. 1563 (1960).)

No similar claim under the California constitution was cognizable when the complaint was filed. The state Supreme Court had held in 1979 that damages for inverse condemnation were not cognizable either under state or federal law. (See, Agins v. City of Tiburon 24 Cal.3d 266, 598 p.2d 25 (1979) which holds that while Amendment V and Article I, Section 19 of the California Constitution are in "concert," "a [landowner] may not... elect to sue in inverse condemnation and thereby transmute an excessive use of the police power into a lawful taking for which compensation in eminent domain must be paid." Ibid., 24

Cal.3d, a 273, 157 Cal.Rptr., at 375. As the Agins Court holds that, on the point, the U.S. and California Constitutions are merely in "concert," and not coterminous, it cannot be assumed that the later decisions of this Court recognizing a valid claim for damages under the Fifth Amendment for inverse condemnation automatically effected the same change under the California constitution, especially in the absence of California Supreme Court decision so holding. And it is for this reason, also, that the decisions below cannot be seen to rest on an "adequate" state ground.)

The complaint here was filed on August 10, 1984. This Court overruled Agins, supra, three years later in 1987 in First English Evangelical Lutheran Church, supra, an overruling which, however, could not reach Agins' holding on the California Constitution, leaving the bar of Agins under California law intact. Hence, the clear

claim that their property, their interest pursuant to a 1908 instrument in the road, a portion of which crosses federal land, was being taken could only have objective reference to federal law. Similarly, the claim, explicitly, repeated in the brief on appeal could, also, only have reference to federal law as no similar claim was cognizable under state law.

b.

The Court Of Appeal

As to the claims raised here that the court's opinion below violates the prohibitions against ex post facto laws and the Impairment of Obligations of Contracts found in Article I, Section 10, U.S. Constitution, the Federal claims arise as a result of the appellate court's arbitrary decision, and "disregard" of language having

centuries-old and settled meaning.

Some more recent guidelines have now issued from the California Supreme Court in a case reviewed and affirmed by this Court. In Fisher v. City of Berkeley, 37 Cal.3d 644, 654, n.3 (1984), aff'd., 475 U.S. 260 (1986), the court held that in reviewing injunctions, as here, the appellate court applies the law in effect as of the time of decision, whether raised or not by the parties. This has direct application here as it must be recalled that Agins, supra, held that no cause of action lay under federal or state constitutions for damages in inverse condemnation as of 1979. Hence, the Fifth Amendment cause of action could not have been raised by name when the complaint here was filed in 1984. Only when Agins was reversed by this Court in First English Evangelical Lutheran Church in 1987 could the federal cause of action be said to have viability. As the appeal was argued in

1992, where the question of unjust taking was again raised (as the appeal reviewed an injunction depriving petitioners' of their property), it must be clear under Fisher that the Court of Appeal had a duty to apply the constitutional law then in effect. The failure to do so, necessarily had the effect of ruling against the federal claim, whether raised at trial or not.

A cause of action for inverse condemnation was stated in the complaint. California procedural law allows the raising of a constitutional claim for the first time on appeal. The constitutional issue was specifically raised in the briefs on appeal. But even if it had not been, California would have required the Court of Appeal to apply the federal law existing at the time. The silence of the Court of Appeal on the federal issue must be seen as a rejection of it. The constitutional claim has been both pressed and passed upon as a matter of

federal law. Therefore, this court has jurisdiction.

III.

The Court Has Inherent Jurisdiction

By virtue of Article III, sections of 1 and 2, this Court has the inherent jurisdiction, unaided by statute, to review all cases in law or equity arising under the Constitution or the laws of the United States. Section 2 explicitly states that federal judicial power shall extend "to controversies to which the United States shall be a party..." In conjunction with the Supremacy Clause of Article VI, by virtue of which the Constitution and laws of the United States bind state court judges, the issue arises as to whether the failure of the L.A.C.C. District to join the United States as an indispensable party deprived

the state court of subject matter jurisdiction. The road to which the court quieted title traversed the Angeles National Forest, operated by the U.S. forest Service, for .7 miles. But the Forest Service was not joined, and it is, therefore, unclear how the court's decrees could affect its rights in the road which crosses, or is surrounded by, federal property. What is the federal government's interest, if any?

The Supremacy Clause requires that federal law be applied no matter how or where it arises, and Article III would seem to say that this Court not only has the jurisdiction to decide the issue, but must so decide it under the Supremacy Clause, because that clause is mandatory (using the verb "shall").

An indispensable party is one whose absence prevents the court from rendering any effective judgment between the parties because subject matter jurisdiction is lost.

The United States was not given notice as required by Shaffer v. Heitner 443 U.S. 186 (1987). Issues of jurisdiction may be raised at any time under both systems. (See, Heitz v. County of Sacramento, 87 Cal.App.3d 754, 757, n.2, 151 Cal.Rptr. 429, 430, n.2 (1978); O'Neill v. Spillane, 45 Cal.App.3d 147, 156, 119 Cal.Rptr. 245, 252.)

IV

The Court Has Plenary Jurisdiction Over The Remaining Issues

This Court has jurisdiction over the claims raised under Amendment V and XIV, and Article III, and has jurisdiction over the entire case, including the other constitutional issues stated. 28 U.S.C. Section 2106. All other stated issues can be reached under the plain error rule of this Court. Rule 24.1(a).

Constitutions, Statutes and Rules Cited

The text of the provisions are set out verbatim in the appendix. For the Court's convenience, they are paraphrased here.

1.) California Civil Code Section 1647: Contracts explained by circumstances.

2.) California Civil Code Section 1641: Effect to be given to every part of contract.

3.) California Civil Code Section 1644: Words to be understood in usual sense.

4.) California Civil Code Section 1638: Intentions to be ascertained from language.

5.) California Civil Code Section 1636: Contracts, how to be interpreted.

6.) California Civil Code Section 1070 states where several parts of a grant are irreconcilable, the former

prevails.

7.) California Civil Code Section 1105 provides that a "grant" is presumed to be a grant of a fee simple.

8.) California Civil Code Section 1069 provides that a deed is to be construed in favor of the grantee.

9.) California Civil Code Section 1104 provides that appurtences to land conveyed pass by operation of law, without mention.

10.) California Civil Code Section 685 provides that tenants in common owe each other a fiduciary duty not to oust the other from use and enjoyment of the property.

11.) California Civil Code Section 3522 provides that one who grants a thing is presumed to grant whatever is essential to its use.

12.) Article I, Section 10, U.S. Constitution provides no state

shall pass an ex post facto law or a law impairing contracts.

13.) Amendment V, U.S. Constitution, provides no state shall take property without paying just compensation.

14.) Article III, Sections 1 and 2 vest this Court with jurisdiction with the judicial power extending to all cases of law and equity arising under federal law and in controversies in which the United States shall be a party.

15.) Article VI, U.S. Constitution, provides that the Constitution and laws of the United States is the supreme law of the land binding state court judges.

16.) Amendment XIV, U.S. Constitution, provides that no state shall deprive a person of property without Due Process of law nor deny any person Equal Protection of the Laws.

17.) California Constitution, Article I, Section 19 provides that private

property may be taken or damaged only when just compensation has been paid.

18.) California Code of Civil Procedure Section 1060 provides that, in a declaratory judgment action, Court may make a binding declaration of the parties respective rights and duties.

Statute Involved

A California Statute, Civil Code Section 1070, was given effect in direct conflict with a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, to which the state court refused to give effect. See 3RT 677:3-28, 673:1.

Statement Of The Case

In 1984, the District objected to the Johnsons' use of the road for purposes of profit, and objected to the Johnsons' maintenance of the road, claiming that the use and maintenance of the road interfered with its dedication as an ecological reserve, a dedication which had not yet been made when the Johnsons took possession in 1974.

The Johnsons filed a complaint after the dispute had become intolerable, in the Superior Court in 1984 seeking to quiet title, declaratory and injuncitive relief and damages. The District filed a general denial, and cross-complained for quiet title, trespass, injunctive relief and damages and disclaiming the obligations to help maintain the road across U.S. land, a position contrary to the terms of the 1908 Agreement, but failing to name or serve the U.S. government as an indispensable party.

The Johnsons' complaint alleged that the District is attempting "to violate plaintiff's property rights and rights incidental to ownership of plaintiff's property." (1CT 37, paras. 14 and 15; Appendix.)

The case turned upon the interpretation of a July 21, 1908 Agreement in the chain of title which conveyed rights and interests in a privately owned road, Gold Creek Road, which crosses federally owned land, the Angeles National Forest, for .7 miles, and which leads to and across land owned by the Los Angeles Community College District, a subdivision of the State of California, and which ends on the 160 acres of land owned by Jack and Linda Johnson. (Exhibit 2, see Appendix).

The 1908 instrument was executed by private parties who were the earliest predecessors in interest, now long deceased.

Robert Scott Watt, first party, the grantor, was the District's original predecessor in interest. Edward D. Silent, et al., were the Johnsons' original predecessors and the grantees.

The 1908 Agreement recites that the first party built the road in 1902, and that it was a private road, to and on the land of the first party, and that all rights in the road were vested solely in the first party, who used, maintained, and gated the road. The first party granted an undivided 1/2 interest in the road to the second party.

The first party's rights in the road across federal land are governed by federal law pertaining to the acquisition of property, and in particular by U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, which held that "The rule of lost grant to land applies to claims to land held adversely to the sovereign."

Johnson cited U.S. v. Fullard-Leo

(1947) in closing arguments at trial. "The rule of lost grant to land applies to claims to land held adversely to the sovereign."

At trial, Jack Johnson testified that the 1908 Agreement incorporated U.S. Government Surveys by reference into the document, and he cited the 1908 instrument's reference to Section Twenty Three (23), Twenty Four (24) and Twenty Six (26) in Township Three (3) North, Range Fourteen (14) West, San Bernardino Meridian.

Johnson cited and introduced into evidence U.S. Department of the Interior Surveys and U.S.G.S. Topographical Maps which identified the road and the subject land, for all years, beginning in 1900, and which show that the road was already in existence and ended 1/4 mile inside the second parties' land in Section Twenty Four at the time of the 1908 Agreement.

Johnson also entered into evidence a map produced by the U.S. Forest Service, Map

No. 137-4C, which is a U.S.G.S. Sunland Quad. Topo. Map modified by the U.S. Forest Service and which shows the boundaries of the subject properties, and which shows the road crossing the U.S. land and the L.A.C.C. District land and ending on the Johnsons' land.

The various Government Maps and Surveys, beginning with the 1900 edition of the U.S.G.S. Sunland Quad. and San Fernando Topo. Maps of the area, all show the road as having been in existence since 1900, as the one and only road to and on these properties, from 1900 until the present.

The relevant U.S. Surveys, Maps, Field Notes, and related documents were all admitted into evidence and were uncontroverted. CT Exhibits No. 40, 39, 4, 3, 6, 5.

The original parties to the 1908 Agreement all having been long deceased, Johnson presented extrinsic evidence to show

the circumstances of the parties and the history of the road.

Because of the road's location, in close proximity to Gold Creek, the road is subjected to heavy damage from the forces of nature, and the flash-flooding of Gold Creek, from time to time. As a result, the road has been reconstructed and rebuilt several times throughout its history. Robert Scott Watt, the first party to the 1908 Agreement, rebuilt the road in 1902.

Johnson's position was that pursuant to the 1908 Agreement, the L.A.C.C. District and the Johnsons each owned an undivided 1/2 interest and other interests in the road which led across U.S. land and across District Land, and which ended on Johnson's land, and that the Johnsons and the District were co-owners of the road.

The District called a representative of the U.S. Forest Service, Mr. Steven Bear, the acting District Ranger, Angeles National

Forest, to testify to the effect that the U.S. Forest Service owned the road across Forest Service land.

In an exchange with the Court, while cross examining Steven Bear, Johnson claimed an ownership interest in the road across the National Forest.

STEVEN BEAR (called as a witness by L.A.C.C.) DIRECT EXAMINATION 2 RT 318: 5-21:

Q. Does the U.S. Forest Service have an interest in Gold Creek Road?

A. The part that's on National Forest, yes, we do. We manage that road.

Q. Mr. Bear, on occasion have you come to know Mr. Johnson by reason of his activities on the road?

A. Yes, I have.

Q. What is your familiarity with Mr. Johnson's activities on the road?

A. Mr. Johnson worked on the road with heavy equipment without Forest Service permission.

Q. Was that on the portion of the road belonging to the Forest Service?

A. Yes.

CROSS EXAMINATION (by Mr. Johnson) 2 RT 325: 1-18:

MR. JOHNSON: I would like to ask Mr. Bear if the Forest Service, or their attorneys and officers, received a letter from me to the effect that I have an ownership interest in that road.

THE COURT: You claim an ownership interest.

MR. JOHNSON: Yes, sir. I claim an ownership interest.

THE WITNESS: I believe we do.

THE COURT: The issue in this case is whether you have a right of way, whether you have a fee simple, whether you have anything by virtue of grant deed, or did you, by agreement, have an easement for certain use of the road, both sides. Now that's the issue in this case. So let's proceed.

JOHNSON: Very well.

Q. Then you do have a letter that I claimed an ownership interest to that effect?

A. I believe we do.

The district disclaimed any interest or obligation pursuant to the 1908 Agreement in that .7 mile portion of the road which crosses Angeles National Forest land and leads to District property. The District claimed an easement in that portion of the road, independent of the 1908 Agreement, and in contradiction to the terms of the Agreement.

Johnson's position was that in light of the uncontroverted evidence and the recitals in the 1908 Agreement, the .7 mile portion of the road leading to the District property began at the Brown Ranch, and proceeded across National Forest land to the District's Western boundary, in Section

Twenty Three, as recited in the 1908 Agreement, and as shown on all the U.S. Topo Maps and by all the testimony.

When the district stated in closing that adverse possession could not be a means of acquisition of publicly owned land, and relied on State law, Calif. Civil Code Section 1070, as interpreted by two state court decisions, Wright v. Goleta Water Dist. (1985) 174 Cal.App. 3d 744, and City of Los Angeles v. Coffee (1966) 243 Cal.App. 2d 121, Johnson replied as follows: "Your Honor, we would respond by citing U.S. v. Fullard-Leo, a U.S. Supreme Court case that held that the rule of lost grant to land applies to land held adversely to the sovereign." 3RT 672: 24-28; 673:1-2.

The District claimed to have dedicated the District property an ecological reserve at some time after 1972, although they were unable to produce any kind of documentation relating to a formal dedication.

Johnson argued that no competent authority had ever dedicated the District property an ecological reserve. 3RT 673:7-9; 2 RT 306:21-28.

The District contended that the road was a part of the ecological reserve, and that the Johnsons could not maintain the road without District permission, and that the road must be kept in a natural condition.

The District further contended that the Johnsons did not have the right to use the road for commercial purposes, or for profit.

The Johnsons' position was that the parties were co-owners of the road with equal rights and obligations in the road, and that in any case, the rights granted in the 1908 Agreement were broad and unrestricted.

The extrinsic evidence demonstrated that all the parties and successors in

interest to the 1908 Agreement had used both properties and the road for income producing purposes for all years since 1902, and that even the District had done so for twenty consecutive years, from 1950 through 1972.

The record shows the commercial history of the subject properties and the road is as follows:

The properties are located in the Little Tujunga Mining District and are zoned A2-5 by Los Angeles County.

The A2-5 zoning is heavy agriculture, and the zoning liberally permits non-agricultural uses, such as clubs, campgrounds, motion picture production, and over 100 other non-agricultural activities for profit.

There is uncontroverted testimony concerning the zoning, which was admitted into the record without objection, Jack Johnson 1RT 20:20-28; 21:1-24 CT Exhibits 1, 6 and C.

The zoning is shown on documents admitted in evidence.

The zoning was not disputed.

As to the actions of the long deceased parties to the 1908 Agreement, the only evidence was that introduced by Johnson, the 1902 U.S. Department of the Interior Survey No. 52 182 which surveyed the area and which showed the vineyards of Robert Scott Watt. CT Exhibit No. 3.

Uncontroverted testimony at trial established that the Watt brothers, R.B. Watt and A.B. Watt, the sons and successors in interest of Robert Scott Watt, first party, and the predecessors in interest of the District, used their land and the road for the production of income and for profit, and they earned their livelihood thereby, from year to year, up until 1950, when they sold their land to the District. Floyd Bodle 1RT 209:21-28; 210:1-18; see Appendix.

From 1950 through 1972 the District

leased its property to private parties, a Mr. Archer and a Mr. Witchell, for a fee and other valuable considerations. In addition to the fee, the lessees were required to provide a caretaker for the property and to keep the water lines and fences in repair. Dennis Lee, the District's custodian of records, so testified. Dennis Lee 2RT 252:13-15; 252:28; 253:1-23; see Appendix.

Floyd Bodle, a successor in interest of the second parties to the 1908 Agreement, and the predecessor in interest of the Johnsons, used his property for the production of income.

Floyd Bodle used his property for the commercial production of honey, and employed a beekeeper in the 1930's and the 1940's. Floyd Bodle 1RT 217:14-22; 219:28; 210:1-11; see Appendix.

Floyd Bodle also had a business arrangement with Clarence Joe Brown, whereby Bodle permitted Brown to graze cattle at the

Bodle Ranch for purposes of profit, and Brown received fees from hunters, hikers and campers who used the Bodle Ranch. Clarence Joe Brown 1RT 190:2-14; 198:1-9; see Appendix.

The Johnsons purchased the Bodle property in 1974 and named it Gold Creek Ranch. The Johnsons used the 160 acre property for income producing purposes from 1974 forward, renting to private groups as a campground, and for motion picture filming, etc.

In 1972 the L.A.C.C. District stopped leasing their property for profit. An ad hoc group of teachers had become interested in using the property, and the District allowed them to do so. This ad hoc group of teachers called themselves the Gold Creek Committee and they claim to have dedicated the District property as an ecological reserve, and they claimed that the Johnsons' rights to use and to maintain

this road are restricted by reason of this dedication. Laurel Woodley, see appendix, 2RT 439:21-25; 444:1-6.

No documentation of any kind was produced at trial to support the claim that the property was dedicated an ecological reserve by any competent authority.

Johnsons' position was that just because an ad hoc group of teachers were permitted to use the District property for occasional study purposes, beginning after 1972, this did not constitute a dedication of the District property by any authority competent to take the road and include it as an ecological reserve and thereby diminish his rights to use and maintain the road.

In closing, Johnson argued that the District had not demonstrated that their property had ever been dedicated an ecological reserve by any competent authority.

As pointed out in Johnson's opening

Appellate brief, for the District to argue a dedication of their property the effect of which is to eliminate the lawful uses of the Johnsons' property is to effectively condemn the Johnsons' property without paying just compensation. (p. 24:5-8) The effect is both retroactive and confiscatory. (p. 27: 27-28).

When rendering his decision on the quiet title issue, the trial judge stated: "The Court knows the intentions of the parties in any agreement are important. I've heard those intentions."

"...when you have evidence from the parties that there was no commercial intent in this, it was more or less a place for the Bodles and others to go and rest and relax, and if they could get some honey from the wild bees and make, as he referred to, a dollar, he would do so. But this does not permit either the community -- nor does it permit you to open a road for public use,

turning them into camp sites, turning them into weekend resorts. It has to be kept in the position that it was in the wild-life period. It may hurt some people. That's fine. But it will have to go along with that particular consent of the parties."

"With reference to the quiet title, Gold Creek Ecological Reserve is going to be used as an instructional, training and natural science by the students and faculty. That's their purpose and any change in purpose in that would have to be effected in some other manner." 3RT 677: 21-28; 678: 1-10.

The Court also ruled that the Johnsons may not maintain the road without District permission.

The trial court gave to the quasi-dedication the force and effect of an enactment of the State, and took private property for the benefit of the ecological reserve by misstating the actions of non-

parties as grounds for discarding a carefully worded fourteen paragraph agreement containing grants and covenants running with the land.

The trial court confused the successors in interest with the original parties to the 1908 Agreement who were long deceased. The trial court then misstated the record as to the actions of these successors in interest, all of whom had made commercial use of their properties, including the District itself.

The 1908 Agreement was simply disregarded in its entirety, for the benefit of the ecological reserve.

Floyd Bodle was not a party to the 1908 Agreement, and the courts misstated the record. Floyd Bodle was the third successor in interest in the chain of title of the first party, and his rights are pursuant to grant; Bodle used his property for the production of income. Even if he had not

done so, rights pursuant to grant are not lost by nonuser.

Both Bodle and Brown used the Bodle property for commercial purposes.

The record also shows that the District property was used for profit for twenty consecutive years, from 1954 to 1972.

The District's predecessors R.B. Watt and A.B. Watt, the sons and successors in interest of Robert Scott Watt, first party, and the predecessors in interest of the District, used their land and the road for the production of income and for profit, and they earned their livelihood thereby, from year to year, up until 1950, when they sold their land to the District.

The Appellate Court affirmed the Superior Court's judgment, and doing so based its ruling on 16 obvious misstatements and obfuscations of the record.

The judgment was entirely arbitrary,

devoid of evidentiary support, contrary to the record, and contrary to applicable rules of law. The Court made misstatements and obfuscations of the record, rationalizing the arbitrariness of the decision.

A motion for reconsideration, which listed the Court's misstatements of the record, was denied.

The motion for reconsideration argued that the court arbitrarily reached its decision, and rationalized its decision, and did not reason to a conclusion from the facts, and that the agreement was "scrapped" by the court.

The California Supreme Court refused to review the decision.

The California courts systematically misstated and obfuscated the record, and arbitrarily rendered a decision contrary to the evidence and applicable law, thereby taking private property for the "ecological reserve" without Due Process, disregarding a

carefully worded fourteen paragraph contract, and refusing to give effect to a decision of the U.S. Supreme Court.

The rules of interpretation being extremely flexible, the facts in a given case will influence the application of the rules of interpretation.

The Appellate Court misstated the record over 16 times in its opinion, and rationalized an arbitrary misapplication of the rules of interpretation, thereby eviscerating a contract and taking property for the state in violation of Due Process.

The Appellate Court stated, as grounds for affirming the Superior Court judgment, that the Johnsons' rights in the road were restricted by grant because the road was privately owned, and by the misstated conduct of the Johnsons and of the District's predecessors in interest, Floyd Bodle, and Arthur and Robert Watt, who, the court stated, used their land for "mostly"

non-commercial purposes.

Floyd Bodle, and Arthur and Robert Watt were not parties to the 1908 Agreement. Floyd Bodle was the third successor in interest in the chain of title of the second parties.

Arthur and Robert Watt were the third successors in interest in the chain of title of the first party.

These predecessors in interest were not parties to the 1908 Agreement - their rights were pursuant to grant.

The Appellate Court also mis-characterized the road, as an unpaved dirt road.

The road has been repeatedly paved with liquid asphalt and concrete by all the parties in the chain of title from time to time throughout its history. (Dennis Lee 2RT 371:20-28; 372:1-3, Appendix p. 97; Floyd Bodle 1RT 215:24-26).

The Appellate Court confused

proposed improvements to the road, mentioned in a memo which did not discuss or mention maintenance, with maintenance, and then the Court misstated the testimony concerning maintenance. Floyd Bodle testified that he never asked the District's permission to do maintenance, and that he alone maintained the road for many years. (Floyd Bodle 1RT 216:28; 217:1-5; see Appendix p. 92) Dennis Lee, the District Custodian of Records, testified that the District had no request from Bodle to do maintenance in its files, and no request from the Johnsons. (Dennis Lee 2RT 371: 7-14; see Appendix). The Appellate Court demonstrated an inability to distinguish between improvements and maintenance. The memo did not even relate to maintenance. Floyd Bodle's rights to maintain the road are pursuant to grant and are explicitly stated in the instrument as the right to maintain the road "at all times"; paragraph 5, 1908 Agreement.

The Appellate Court obfuscated the record relative to the zoning of the properties, and said that the record is silent concerning the zoning.

The record is not silent concerning the zoning.

Documents showing the zoning are in evidence, and uncontroverted testimony concerning the zoning is in the record and unobjected to, which establishes that the zoning is A2-5, and liberally permits for profit use, including campgrounds.

The zoning was not in dispute.[1]

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[1]The District never disputed the fact that the zoning is A2-5. In addition to the documents and uncontroverted testimony in evidence, the Johnsons filed an unopposed motion for judicial notice which included the zoning code A2-5, on 1-9-90, on which the trial court issued no ruling, the effect of which is to grant the motion under Calif. Evidence Code Sect. 456 which provides that if the trial court denies a request to take judicial notice of any matter, the court shall advise the parties and indicate for the record that it has denied the request. The trial court did not so indicate a denial, and the request for judicial notice is granted under operation of Section 456.

The Appellate Court stated, contrary to the uncontroverted record, that the road did not extend to the second party's property in 1908.

The documented record show that the road did extend to and end within the second party's land in 1908. CT Exhibits 40, 39, 4,3,6,5.

The California Courts completely ignored the fact that approximately half of the road crosses federal land when rendering their decisions.

The California Appellate Court made the amazing comment that a privately owned road cannot be used for commercial purposes.

The road is <u>private property</u>, which may be used for all reasonable purposes, including for profit.

If the Record Had Not Been Misstated by the Appellate Court, a Different Decision Would Have Resulted

1. The 1908 Agreement recites that the first party built the road in 1902, and that it is a road leading to and on the lands of the first party.

2. That portion of the road leading to the first party's land is across U.S. Government land, the Angeles National Forest.

3. The instrument recites that the road is a private road, and that all rights in the road are vested solely in the first party, who built the road, used the road, maintained the road, and who maintained a gate on the road.

4. The instrument, in its recitals, sets forth all the elements required to acquire title to the road across U.S. land pursuant to U.S. v. Fullard-Leo (1947) 67 S. Ct. 1287.

5. The instrument recites to the effect that the first party owns the road and can convey an interest in it.

6. For a valuable consideration, equal to the value of the fee, the first party conveyed an undivided 1/2 interest in the road to the second party.

7. The effect of the conveyance of an undivided 1/2 interest forever by the owner of the fee is to make the parties co-owners of the fee, each holding an undivided 1/2 interest as co-tenants in the road. (Davis v. Davis 222 Cal.App.2d 691, 35 Cal.Rptr. 281; Reed v. Spicer (1864) 27 C 57.)

8. The fourteen paragraph instrument provided for joint and unrestricted rights to use the road at all times, and to maintain the road at all times, and the instrument explicitly states to use "at all times" and to maintain "at all times."

9. The Agreement also provides, by

covenants which run with the land, that the parties will share equally the costs or work of maintaining the road, and that the road shall be kept in repair.

10. Since the grant is broad and unrestricted, and the rights of successors in interest are pursuant to grant, and not to the misstated action of any non-party to the Agreement, and since the record shows that all successors in the chain of title, including the District, all made commercial use of the road, the Johnsons have the right to use the road for all reasonable purposes, and for profit.

In construing a deed every provision, clause and word shall be taken in consideration in ascertaining meaning of the grantor, whether words of grant, of description, or words of qualification, restraint, exception or explanation, and every word shall be presumed to have such

force and effect as it can have. East San Mateo Land Co. v. Southern Pacific Co. (1916) 30 CA 223, 157 P. 643. (Civil Code 1638.)

Various terms of a contract will be harmonized if possible, and if there is any ambiguity in its language, or any apparent conflict between its different clauses or provisions, circumstances surrounding its execution and conditions and motives of parties shown by recitals in contract or matters in evidence should be taken into consideration in order that true intent of parties may be ascertained. Retsloff v. Smith (1926) 79 CA 443, 249P 886. (Civil Code 1641.)

Civil Code Section 1647 provides that contracts may be explained by circumstances. A contract may be explained by reference to the circumstances under

which it was made, and the matter to which it relates.

The Decision Was Arbitrary

The Appellate Court systematically misstated the facts and record.

The rules of interpretation of contract and deeds are extremely flexible, and depend upon a correct statement of the facts for their application.

The Appellate Court ignored the fact that almost one mile of the road is across federal land, and leads to the grantor's land.

The typical cases where "a right of way for a road is granted" such as Parks v. Gates, and the others, upon which the Appellate Court relies, do not apply here, and are off point.

None of the cases cited by the court

related to the granting of an undivided 1/2 interest in an existing road half of which is not even on the grantor's land. The road crosses federal land and the grantor's land, and the instrument recited that all rights in the road are vested solely in the grantor.

The first party was therefore competent to convey an interest in the road across federal land, since the road is private property.

The meaning of the term undivided 1/2 interest is well established in the law of property and always refers to the interest of a co-owner. Davis v. Davis.

The term "road" is a generic term, and has no fixed meaning. Chollar-Potosi Mining Co. v. Kennedy, 3 Nevada 861, 93 Am.Dec. 409.

The meaning of a writing can only be found by considering all the circumstances that disclose the sense in which the writer

used the words. Valdez v. Federal Mut.Ins. Co. (1969) 272 CA.2d 323, 77 Cal.Rptr 411; C.C. 1644.

Having systematically misstated the facts, the Appellate Court did not apply the pertinent rules of interpretation.

All the rules of interpretation must be considered, and each given its proper effect when necessary, in order to arrive at the true effect of an instrument. California Bldg. Co. v. Halle (1947) 80 CA.2d 229, 181 P2d 404.

The rules the Court did apply were applied to misstated facts.

Although the circumstances were thoroughly documented, they were systematically misstated by the Court.

The rules of interpretation are always applied to specific facts. Misstate the facts, and the result is changed. In this way property can be taken for the State - and the Constitution defeated by arbitrary

decree.

As Justice Blackmun stated, expressing the unanimous opinion of the United States Supreme Court, in the case of Webb's Fabulous Pharmacies, Inc. v. Beckwith (1980) 449 U.S. 155, 66 L.Ed. 2d 358, 101 S.Ct. 446, "Neither the Florida legislature by statute, nor the Florida courts by judicial decree [may take private property without just compensation], [or] To put it another way: a State, by ipse dixit, may not transform private property into public property without compensation, ...This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That clause stands as a shield against the arbitrary use of governmental power." The Fifth and Fourteenth Amendments were held to be violated.

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Reason For Granting The Writ

I.

California Courts

Ignored Federal Law

The California courts have refused to give effect to a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67 S.Ct. 1287, which held that "The rule of lost grant to land applies to claims held adversely to the sovereign." The California courts refused to apply federal law to the interpretation of a 1908 Agreement granting rights and interests in a privately owned road built in 1902 across .7 miles of federally owned land which is now the Angeles National Forest. The federal question is governing. The road crosses both federal land and the privately owned land of the 1908 grantor, which is now owned by a subdivision of the state of California, the Los Angeles Community College District. The determination of the interest across the

federal portion of the road is determining as to the intention of the parties, and will determine the interpretation of the agreement as a whole, since the instrument grants an undivided 1/2 interest in the road to (across federal land) and on (across the land of the grantor).

Whether state court gave proper effect to a decree of federal court embraced federal question. Crescent City Live Stock Co. v. Butchers Union Slaughterhouse (1887) 120 U.S. 141, 30 L.Ed. 614 7 S.Ct. 472.

California statutes and decisions as applied by the California Courts are in conflict with U.S. law and with a 1947 decision of the U.S. Supreme Court, U.S. v. Fullard-Leo. The United States Supreme Court may exercise revising power on all questions arising under Constitution and law of Union, and its decisions are final and

obligatory upon all other judicial tribunals, state or federal, and while state tribunal has right to consider any such questions and to determine them, its decision must conform to that of the Supreme Court, or corrective power may be exercised. Green v. Lessee of Neal (1832) 31 U.S. 291, 8 L.Ed. 402.

II.

The Dedication Of The District's Property Took Petitioner's Property Without Compensation

An enactment of the state of California is in conflict with the U.S. Constitution, and has resulted in the taking of private property without compensation and in violation of Due Process.

The District at trial claimed that

the District land had been dedicated as an "ecological reserve" by an ad hoc group of teachers who were permitted to use the District property. This group was formed about 1972, at the time the District ceased leasing its land to private parties for profit.

This committee claimed that the road was a part of the ecological reserve, and objected to the Johnsons use of the road for profit.

This committee also objected to the Johnsons maintenance of the road in any manner which the committee deemed incompatible with the ecological reserve.

The trial court ruled that the District property is an ecological reserve.

The court disregarded the Johnsons' rights pursuant to the 1908 Agreement for the benefit of the ecological reserve.

Any enactment, from whatever source originating, to which state gives force of

law, is statute of state within meaning of statue conferring on Supreme Court of United States jurisdiction to review decision of state court upholding state statute as against contention that it is repugnant to Constitution, treaties or laws of United States. William v. Bruffy (1878) 96 U.S. 176, 24L.Ed. 716; Reinman v. Little Rock (1915) 237 U.S. 171, 59 L.Ed. 900, 35 S.Ct. 511.

III

The Decision Was Arbitrary and Capricious

The decision of the California courts was arbitrary, unfounded, contrary to the evidence and applicable law, and was a violation of Due Process whereby the State took private property without compensation in violation of the provisions of Amendment XIV and Amendment V of the U.S.

Constitution.

The State Appellate Court based its decision on systematic misstatements of the record, and then arbitrarily misapplied the rules of interpretation to the obfuscated record and rationalized the arbitrary decisions which took property for the benefit of the ecological reserve.

It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdictions of this court by putting forward nonfederal grounds of decision which are without any fair or substantial support. See Wolfe v. North Carolina (1960) 364 U.S. 177, 185, 80 S.Ct. 1482, 4 L.Ed. 2d 1650.

Where state courts fail to pass on evidence or make findings of fact because under their respective views the facts referred to were immaterial, the United

States Supreme Court is not relieved from its duty to examine the evidence for purpose of determining what facts reasonably and presumably would be found therefrom by state court. Brooklyn Sav. Bank v. O'Neil (1945) 324 U.S. 697, 89 L.Ed. 1296, 65 S.Ct. 895.

Where an asserted federal right turns upon a determination of question of situs, it is the province of the Supreme Court to analyze the facts in order to apply the law and thus to ascertain whether the conclusion of the state court is supported by the evidence. Johnson Oil Refining Co. v. Oklahoma (1933) 290 U.S. 158, 78 L.Ed. 238, 54 S.Ct. 152.

A state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions or fact. Brooklyn Sav. Bank v. O'Neil (1945) 324 U.S. 697, 703; Merchants Nat. Bank v. Richmond (1921)

256 U.S. 635, 638; Carlson v. Washington (1914) 234 U.S. 103, 105.

The exercise of the judicial power to interpret deeds and fashion remedies is state action subject to constitutional limitation. Shelley v. Kramer, (1948) 334 U.S. 1, 68 S.Ct. 68 S.Ct. 836.

The state ground, to be adequate, must also be a tenable one. In other words, Supreme Court review cannot be evaded by reliance on a state ground so certainly unfounded that it properly may be regarded as essentially arbitrary. Enterprise Irrigation District v. Canal Co. (1917) 243 U.S. 157, 164; and see Ward v. Love County (1920) 253 U.S. 17, 22; Postal Tel.Cable Co. v. Newport (1918) 247 U.S. 464, 475-476; Lawrence v. State Tax Commission (1932) 286 U.S. 276, 282.

Is the law of the land relative to the interpretation of contracts, deeds and covenants so unclear that the California courts cannot apply the rules of interpretation in an objective and consistent manner?

Each case may have a different set of facts, but this does not justify an arbitrary and capricious application of the rules of interpretation by the California courts, which have demonstrated a grievous inability and disinclination to apply the rules of interpretation in a uniform and consistent manner.

IV.

The State Court Lacked Subject Matter Jurisdiction

The District, pursuant to the 1908 Agreement, and a decision of the U.S. Supreme Court, U.S. v. Fullard-Leo (1947) 67

S.Ct. 1287, is a co-owner of a road which crosses the Angeles National Forest, and the District is obligated to share the costs of maintenance and to keep the road in repair pursuant to covenants in the Agreement.

The District cross-complained for quiet title, taking a position contrary to the terms of the Agreement, and claimed that the Forest Service owned the road, but did not name the Forest Service or the U.S. Government as an indispensable party.

An indispensable party is one whose absence prevents the court from rendering any effective judgment between the parties because subject matter jurisdiction is lost.

V.

California Courts Must Apply The U.S. Constitution

State courts have a duty to uphold and enforce the Constitution. State courts

should know that when they sanction an evasion of the Due Process provisions by the State, that the corrective power of the Supreme Court is available to enforce the Constitutional prohibition against arbitrary decisions.

State courts bear equal responsibility with federal courts to guard and protect rights secured by Constitution of the United States. Horn v. Ocheskey, D.C.N.M. (1974), 378 F.Supp. 1280.

When the state courts will not protect property rights guaranteed by the Constitution, and acquiesce in the violation of these rights by the state, only the corrective action of the Supreme Court can make the Constitution the law of the land.

Conclusion

For these various reasons, this petition for certiorari should be granted. Petitioners Jack and Linda Johnson ask the Court to grant the writ, and upon further consideration, to reverse the judgment.

April 27, 1993

Respectfully submitted,

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